

AO 120 (Rev. 3/04)

<b>TO:</b> <b>Mail Stop 8</b> <b>Director of the U.S. Patent and Trademark Office</b> <b>P.O. Box 1450</b> <b>Alexandria, VA 22313-1450</b>	<b>REPORT ON THE</b> <b>FILING OR DETERMINATION OF AN</b> <b>ACTION REGARDING A PATENT OR</b> <b>TRADEMARK</b>
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In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been  
 filed in the U.S. District Court WD/TX, Austin Division on the following ☐ Patents or ☒ Trademarks:

DOCKET NO. 1:10-cv-285	DATE FILED April 27, 2010	U.S. DISTRICT COURT Western District of Texas, Austin Division
PLAINTIFF  DDB Technologies, L.L.C.		DEFENDANT  NBA Media Ventures, LLC
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 <i>See Attached</i>		
2 5,526,479		
3 5,671,347		
4 6,204,862		
5 7,373,587		

In the above—entitled case, the following patent(s)/ trademark(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading		
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK	
1			
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4			
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In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT  <i>order of Dismissal</i>
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CLERK William G. Putnicki	(BY) DEPUTY CLERK <i>Deanne Massie</i>	DATE 5/16/2011
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Copy 1—Upon initiation of action, mail this copy to Director    Copy 3—Upon termination of action, mail this copy to Director  
 Copy 2—Upon filing document adding patent(s), mail this copy to Director    Copy 4—Case file copy

April 27, 2010

Respectfully Submitted,

By: /s/ James G. Ruiz

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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

FILED

MAY 16 2011

CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS

BY Judge James R. Nowlin DEPUTY CLERK

DDB Technologies, L.L.C.,

Plaintiff/Counterdefendant,

v.

ESPN, Inc. et al.,

NFL Enterprises, LLC,

Yahoo!, Inc.,

NBA Media Ventures, LLC,

AOL, Inc.,

NHL Interactive Cyber Enterprises, LLC et al.,

Defendants/Counterclaimants.

Judge James R. Nowlin

Special Master Karl Bayer

Civil Action No. 10-CV-246-JRN

Civil Action No. 10-CV-254-JRN

Civil Action No. 10-CV-273-JRN

Civil Action No. 10-CV-285-JRN

Civil Action No. 10-CV-313-JRN

Civil Action No. 10-CV-336-JRN

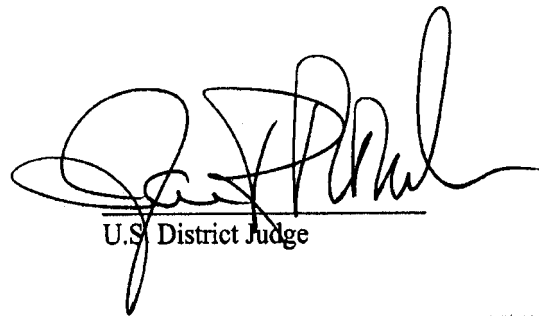
ORDER OF DISMISSAL WITH PREJUDICE

In consideration of the Parties' Stipulated Motion for Dismissal of all claims and counterclaims with prejudice asserted between Plaintiff DDB Technologies L.L.C. and Defendant NBA Media Ventures, LLC, pursuant to Fed. R. Civ. P. 41(a)(2) and (c), hereby move for an order dismissing all claims and counterclaims in Civil Action No. 10-CV-00285-JRN styled *DDB Technologies L.L.C. v. NBA Media Ventures, LLC* (consolidated with Civil Action No. 10-CV-00246-JRN styled *DDB Technologies L.L.C. v. ESPN, Inc. et. al*), the Stipulated Motion for Dismissal is GRANTED, and it is ORDERED, ADJUDGED AND DECREED that all claims and counterclaims asserted in this suit between Plaintiff and Defendant are hereby

dismissed with prejudice, subject to the terms of that certain agreement entitled "SETTLEMENT AGREEMENT" dated May 13, 2011.

It is further ORDERED that all attorneys' fees and costs are to be borne by the party that incurred them.

DATED this <sup>JA</sup>16 day of May, 2011



U.S. District Judge

Defendant.

## JURY DEMANDED

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the NBA's ownership and operation of the internet website, NBA.com, which is available to, accessed by, and subscribed to by users, customers, and potential customers of the NBA within this judicial district.

### **JURISDICTION AND VENUE**

3. This is a civil action for patent infringement arising under the patent laws of the United States, Title 35, United States Code. This Court has jurisdiction under 35 U.S.C. §§ 271, *et seq.*, and 28 U.S.C. §§ 1331 and 1338.

4. This Court has personal jurisdiction over the NBA pursuant to Tex. Civ. Prac. & Rem. Code § 17.041 *et seq.* Personal jurisdiction generally exists over the NBA because the NBA has minimum contacts with this forum as a result of business regularly conducted within the State of Texas and within this district, and, on information and belief, specifically as a result of, at least, committing the tort of patent infringement within Texas and this district. Personal jurisdiction also exists because, on information and belief, the NBA has entered into numerous contracts with customers in Texas for products and services offered by the NBA, which products and services include, among other things, the knowing and repeated transmission of computer files over the Internet. This Court's jurisdiction over the NBA comports with the constitutional standards of fair play and substantial justice and arises directly from the NBA's purposeful minimum contacts with the State of Texas.

5. Venue is proper in this Court under 28 U.S.C. §§ 1391(b) and (c) and 28 U.S.C. § 1400(b).

6. Although the NBA has engaged in business in the State of Texas, the NBA has not designated an agent for service in the State. Therefore, the Secretary of the State is an agent for service of process for the NBA pursuant to Tex. Civ. Prac. & Rem. Code § 17.044.

**THE PATENTS-IN-SUIT**

7. On June 11, 1996, United States Patent No. 5,526,479 (“the ‘479 Patent”), entitled “Method and Apparatus for Broadcasting Live Events to Another Location and Producing a Computer Simulation of the Events at that Location,” was duly and legally issued by the United States Patent and Trademark Office to David R. Barstow and Daniel W. Barstow. A copy of the ‘479 Patent is attached hereto as Exhibit A.

8. On September 23, 1997, United States Patent No. 5,671,347 (“the ‘347 Patent”), entitled “Method and Apparatus for Broadcasting Live Events to Another Location and Producing a Computer Simulation of the Events at that Location,” was duly and legally issued by the United States Patent and Trademark Office to David R. Barstow and Daniel W. Barstow. A copy of the ‘347 Patent is attached hereto as Exhibit B.

9. On March 20, 2001, United States Patent No. 6,204,862 (“the ‘862 Patent”), entitled “Method and Apparatus for Broadcasting Live Events to Another Location and Producing a Computer Simulation of the Events at that Location,” was duly and legally issued by the United States Patent and Trademark Office to David R. Barstow and Daniel W. Barstow. A copy of the ‘862 Patent is attached hereto as Exhibit C.

10. On May 13, 2008, United States Patent No. 7,373,587 (“the ‘587 Patent”), entitled “Representing Sub-Events With Physical Exertion Actions,” was duly and legally issued by the United States Patent and Trademark Office to David R. Barstow and Daniel W. Barstow. A copy of the ‘587 Patent is attached hereto as Exhibit D.

11. The ‘479, ‘347, ‘862, and ‘587 Patents are referred to collectively hereinafter as “the DDB Patents.”

12. David R. Barstow and Daniel W. Barstow assigned the DDB Patents to DDB. DDB owns all right, title and interest in and to the DDB Patents.

### **FACTS**

13. In the 1980s and continuing through the early 1990s, Dr. David R. Barstow, a Partner in and President of DDB, along with his brother, Daniel W. Barstow, a Partner in DDB, developed a method and apparatus for providing to remote viewers simulations of live sporting events including, for example, basketball games, etc. All of the technology required to produce such simulations is embodied in the DDB Patents.

14. Without DDB's permission, the NBA began providing simulation products/services over the Internet that embody the invention(s) set forth in the DDB patents. For example, the NBA's "TV Companion" product/service permits remote users to watch a simulation of live sporting events including, for example, basketball games. *See, e.g.,* Exhibit E.

15. The NBA has been and still is infringing the DDB Patents by making, selling, offering for sale, and using products and/or services embodying the invention(s) set forth in the DDB Patents including, without limitation, the NBA's "TV Companion" product/service available through the NBA's NBA.com web site, and by inducing and/or contributing to the infringement of the DDB Patents by others.

### **COUNT I: INFRINGEMENT OF THE '479 PATENT**

16. DDB repeats and realleges each of the allegations of paragraphs 1-15 as if set forth in full.

17. The NBA has infringed and continues to infringe the '479 Patent by making, selling, offering for sale, and using products and/or services covered by claims of the '479 Patent



(including, for example, the NBA's live game simulation product/service "TV Companion"), without DDB's authorization in violation of 35 U.S.C. § 271(a).

18. The NBA has in the past and continues to promote and advertise its live game simulation products/services by providing links to its live game simulation products/services on its website. *See, e.g.*, Exhibit F.

19. The NBA's live game simulation products/services are not staple articles or commodities of commerce suitable for substantial non-infringing use.

20. The NBA's actions have constituted and continue to constitute active inducement of and contributory infringement of the '479 patent.

21. On information and belief, the NBA's continued acts of infringement have been, and will continue to be, wanton and willful.

22. The NBA's infringing activities have damaged and continue to damage DDB. Upon information and belief, the NBA will continue to infringe the '479 Patent, causing irreparable harm to DDB unless enjoined by this Court.

**COUNT II  
INFRINGEMENT OF THE '347 PATENT**

23. DDB repeats and realleges each of the allegations of paragraphs 1-22 as if set forth in full.

24. The NBA has infringed and continues to infringe the '347 Patent by making, selling, offering for sale, and using products and/or services covered by claims of the '347 Patent, (including, for example, the NBA's live game simulation product/service "TV Companion"), without DDB's authorization in violation of 35 U.S.C. § 271(a).

25. The NBA has in the past and continues to promote and advertise its live game simulation products/services by providing links to its live game simulation products/services on its website. *See, e.g.*, Exhibit F.

26. The NBA's live game simulation products/services are not staple articles or commodities of commerce suitable for substantial non-infringing use.

27. The NBA's actions have constituted and continue to constitute active inducement of and contributory infringement of the '347 patent.

28. On information and belief, the NBA's continued acts of infringement have been, and will continue to be, wanton and willful.

29. The NBA's infringing activities have damaged and continue to damage DDB. Upon information and belief, the NBA will continue to infringe the '347 Patent, causing irreparable harm to DDB unless enjoined by this Court.

**COUNT III  
INFRINGEMENT OF THE '862 PATENT**

30. DDB repeats and realleges each of the allegations of paragraphs 1-29 as if set forth in full.

31. The NBA has infringed and continues to infringe the '862 Patent by making, selling, offering for sale, and using products and/or services covered by claims of the '862 Patent (including, for example, the NBA's live game simulation product/service "TV Companion"), without DDB's authorization in violation of 35 U.S.C. § 271(a).

32. The NBA has in the past and continues to promote and advertise its live game simulation products/services by providing links to its live game simulation products/services on its website. *See, e.g.*, Exhibit F.

33. The NBA's live game simulation products/services are not staple articles or commodities of commerce suitable for substantial non-infringing use.

34. The NBA's actions have constituted and continue to constitute active inducement of and contributory infringement of the '862 patent.

35. On information and belief, the NBA's continued acts of infringement have been, and will continue to be, wanton and willful.

36. The NBA's infringing activities have damaged and continue to damage DDB. Upon information and belief, the NBA will continue to infringe the '862 Patent, causing irreparable harm to DDB unless enjoined by this Court.

**COUNT IV  
INFRINGEMENT OF THE '587 PATENT**

37. DDB repeats and realleges each of the allegations of paragraphs 1-36 as if set forth in full.

38. The NBA has infringed and continues to infringe the '587 Patent by making, selling, offering for sale, and using products/services covered by claims of the '587 Patent, (including, for example, the NBA's live game simulation product/service "TV Companion"), without DDB's authorization in violation of 35 U.S.C. § 271(a).

39. The NBA has in the past and continues to promote and advertise its live game simulation products/services by providing links to its live game simulation products/services on its website. *See, e.g.,* Exhibit F.

40. The NBA's live game simulation products/services are not staple articles or commodities of commerce suitable for substantial non-infringing use.

41. The NBA's actions have constituted and continue to constitute active inducement of and contributory infringement of the '587 patent.

42. On information and belief, the NBA's continued acts of infringement have been, and will continue to be, wanton and willful.

43. The NBA's infringing activities have damaged and continue to damage DDB. Upon information and belief, the NBA will continue to infringe the '587 Patent, causing irreparable harm to DDB unless enjoined by this Court.

#### **REQUEST FOR JURY TRIAL**

44. Pursuant to FED. R. CIV. P. 38, DDB demands a trial by jury of any issue triable of right by a jury.

#### **PRAYER FOR RELIEF**

THEREFORE, plaintiff DDB prays for relief against the NBA as follows:

A. That the DDB Patents be adjudged infringed by the NBA and that the infringement be held to be willful;

B. That DDB be awarded compensatory damages for past infringement of the DDB Patents by the NBA in an amount no less than a reasonable royalty, in a sum to be determined at trial, and that said damages be trebled in view of the willful and deliberate nature of the infringement;

C. That the NBA, its officers, agents, servants, employees and attorneys, and other persons in active concert or participation with the NBA be preliminarily and permanently enjoined from further infringement of the DDB Patents;

D. That the NBA be ordered to deliver to DDB for destruction all infringing products and systems in its possession;

E. That this case be declared an exceptional case under 35 U.S.C. § 285 as to the NBA, and that DDB be awarded its attorneys' fees incurred in this action.